

**MINUTES  
INTERAGENCY MIGRANT WORKER POLICY COMMITTEE MEETING**

**February 10, 2009**

The Interagency Migrant Worker Policy Committee Meeting was held at the Virginia Employment Commission Administrative Office in Richmond, Virginia.

The following were in attendance:

Kenneth Annis, Chairman, Migrant & Seasonal Farmworkers Board  
Dolores A. Esser, Commissioner, Virginia Employment Commission  
Nicholas A. Kessler, Deputy Commissioner, Virginia Employment Commission  
Jane Brown, Virginia Department of Social Services  
Diane Dusseau, Workers' Compensation Commission  
Perida Giles, Department of Agriculture and Consumer Services  
Gary Hagy, Virginia Department of Health  
Megan Moore, Department of Education  
Jeff Nelson, Department of Medical Assistance Services  
Jack Turner, Virginia Employment Commission  
Michelle Abraham, Virginia Employment Commission  
Mark Spatig, Virginia Employment Commission  
Joyce Fogg, Virginia Employment Commission  
Evelyn Lewis, Virginia Employment Commission

**Call to Order**

Commissioner Esser called the meeting to order at 9:40 a.m., and welcomed all in attendance.

**Approval of Agenda**

Commissioner Esser asked for approval of the agenda. It was unanimously approved.

**Approval of Minutes**

Commissioner Esser asked for approval of minutes, and stated that changes could be submitted via e-mail to her, Joyce Fogg, or Evelyn Lewis.

**Agency Roundtable Discussion – Future Items of Interests for the Board**

The roundtable discussions were as follows:

A. FAMIS – Jeff Nelson, Virginia Department of Medical Assistance Services (MEDICAID)

The President signed the Bill reauthorizing the Medicaid children's health insurance program. In Virginia it is known as FAMIS, and was scheduled to expire in March 2009. The signing of this Bill extends the coverage from the previous 200% to now 300% of poverty. The biggest change, as it relates to Migrants, is there had been a bar removed for five years. Children and pregnant women, who are immigrants, can now be enrolled at the state's option in the children's health insurance program. With the bar removal, it gets the children and pregnant women into the program faster. Medicaid will still need interpretive regulations implementing this. It includes funding for interpretation and translation services. It formalizes what can be done and puts resources on the table. The Bill is effective April 1, 2009. Mr. Nelson will check on flyers pertaining to this. Anyone interested can also go to the website: [www.famis.org](http://www.famis.org) for information.

B. Migrant Education – Megan Moore, Virginia Department of Education

Ms. Moore distributed handouts of the 2008-2009 Title I, Part C, of the Migrant Education Program. She stated that there were two pieces of information she wanted to share with the Policy Committee as follows:

1. This year, the Virginia Department of Education was down in migrant education by one division because that division chose to join one of the regional migrant education programs. During the 2007-2008 school year, there were 11 regional and divisional level migrant educational programs. For 2008-2009, there are 10 regional and divisional level migrant educational programs. The amount of \$774,124 was allocated to the program. There is a difference between a division level in which money is strictly allocated to the division and that division runs the migrant education program. If it is a regional program, there is one fiscal agent that works with a number of divisions and they run a regional migrant education program.
2. There are some updated numbers on the Consolidated State Performance Report. Part I has been released for public view. For 2007-2008, a total of 1,423 eligible migrant children have been reported that can be counted for funding purposes. They are down by about 90 to 100 children reported in 2006-2007. At this time, Migrant Education is working on the Consolidated State Performance Report Part II. It will be on the Department of Education's website in about three weeks to a month.

The money goes towards numerous types of services such as direct or support services. It could go towards paying for recruiters going into the fields to recruit migrant children, running a summer school program, and health and mental health services for migrant families.

If someone is interested in making referrals to the allocations, they should contact the specific Migrant Ed Program's migrant coordinator fiscal agent, or contact Ms. Moore and she would provide the contact information for any specific fiscal agent.

C. Food and Environmental Services – Gary Hagy, Virginia Department of Health

Mr. Hagy reported that the Division of Food & Environmental Services is still working on getting inspections done. Each spring he receives two requests, from the Department of Labor and Industry personnel in the Roanoke and Charlottesville areas, for a list of all migrant and labor camps in Roanoke. At this time he has not received any complaints about migrant and labor camps. In March, Mr. Hagy plans to schedule a videoconference with all those in the state that deal with migrant labor programs to review the program again.

D. Perida Giles, Virginia Department of Agriculture and Consumer Services

Ms. Giles did not have any items to report.

E. Workers' Compensation – Diane Dusseau, Virginia Workers' Compensation Commission

Ms. Dusseau reported on a case in which a person was injured while working in Virginia on an H-2A visa. When his visa expired, he returned to his native country as required. While there, he marketed his residual work capacity. He then made a claim for wage loss in Virginia. This had not happened before; therefore, the Commission of Workers' Compensation held an oral argument. After the oral argument, both sides decided to settle. There was no actual decision about this because as far as we know, it was the first time this had happened. It was not clear from Virginia's statutes of Workers' Compensation if this is permitted.

F. H-2A Program (Foreign Workers) – Michelle Abraham, Virginia Employment Commission

Ms. Abraham distributed a handout on *H-2A Re-Engineering*, and reported that the USDOL new regulations concerning the H-2A Program became effective January 17, 2009. The most significant item related to this is the change in the requirements related to housing. The new regulations are more employer-friendly in that they are going to an attestation phase program in which the employers attest that they will be doing certain things to include recruitment, housing, and advertising workers' compensation. The main item is that now instead of having to have the labor camp permit in the housing inspection for employment service prior to certification, the employer only has to attest that he will get this in compliance. The outcome is that basically the employer can say he is going to do it, attest to it, sign the new form for application for foreign workers, and then go forward with certification. There were additional changes related to the program as follows:

- Minimum wages. Farmers seeking approval to hire H-2A workers must offer and pay the higher of the federal or state minimum wage, the local prevailing wage, or the DOL-determined Adverse Effect Wage Rate (AEWR); the AEWR is usually the highest wage.
- Worker protections. Explicitly barring employers from recouping employer recruitment and application costs from workers, requiring labor contractors with H-2A workers to post a bond with DOL, and requiring employers to begin recruitment of U. S. workers at

least 60 days before the employer-specified need date, up from the current 45 days. Fines for willful violations were raised from \$1,000 to \$10,000.

- Procedures. Under the H-2A Program, employers apply to a National Processing Center (NPC) in Chicago for approval to hire H-2A workers. After the NPC accepts an employer's application, it is sent to the appropriate SWA to begin intrastate and interstate recruitment; SWAs also inspect the employer's housing.
- Wages. The AEWR is usually the highest of the three wages that must be offered and paid to H-2A workers and any U. S. workers employed alongside them.

Commissioner Esser stated that there was a Senate bill asking state agencies to participate in E-Verify. This bill was killed in General Laws. The bill would have mandated that for any employee or contractor hired, the employer would have had to go through the E-Verify system.

Chairman Annis stated that he had concerns about ICE. Illegal workers are not being charged with immigration laws, but are being charged with identity theft in order to be processed through the court system much faster. The immigration system is slow and a long process. When a fake document or social security number is used, it changes everything. If all keeps going the way it is going, it will affect the availability of foreign workers.

#### G. Earned Income Tax Credit – Jane Brown, Virginia Department of Social Services

Ms. Brown distributed a handout about the most recent information on the Earned Income Tax Credit (EITC). Not only in Virginia does citizens leave money unclaimed, but also according to research completed by the Department of Social Services, there was about \$78,000 in EITC left unclaimed by Social Services' clients. Statewide it is a very high number. Not only can people get information from the Department of Social Services and the community action network, but also there are staff trained by the IRS in communities across the state who will assist people in doing their tax return. Anyone can go to the IRS or Department of Social Services websites to obtain additional information.

The Department of Social Services has had a list of legislation to include child support, family services, and community programs. One piece of legislation that stands out pertained to the community services Americorp Program. Placing that Board in Code rather than Executive Order is on its third reading in the House. There is some child support legislation related to proposed reduction of fees for people who may be incarcerated that their child support is not collecting interest while they are incarcerated.

#### **Future Meeting Dates**

Future meeting dates for the Policy Committee will not be determined until further discussion with the Migrant and Seasonal Farmworkers Board.

### **New Business**

Commissioner Esser stated that she felt that it may be of interest to the Policy Committee to have Mr. Tim Freilich of the Virginia Justice Center for Farm and Immigrant Workers, to speak at a future meeting. He follows the federal and state legislation pertaining to migrants, and it would be very worthwhile to hear his points of view. Other presenters to bring before the Policy Committee that would be of interest was Telamon Corporation suggested by Michelle Abraham, and Wage and Hour suggested by Chairman Annis.

Ms. Jane Brown inquired on if there was a name or contact for an advocacy or interest group that is concerned about the family and children of migrant workers. Ms. Ruth Brown, MSFW Board Member, and the person that replaced Rick Cagan, formerly with Council for the Churches, are possible contacts for information. The name of the person that replaced Mr. Cagan will be obtained and provided to Ms. Brown. She also inquired on a possible contact concerning migrants who come into contact with the criminal justice system. Usually, the Legal Aid Justice Center is contacted. The purpose of Ms. Brown asking for these contacts is because the Department of Social Services is looking for a representative to be a part of a group that is dealing with incarceration and re-entry at the community level. They are looking for someone who has expertise with the legal and illegal migrant population. Commissioner Esser stated that she would extend that question to the MSFW Board and see who might be most appropriate. Joyce Fogg will provide Ms. Brown with the contact information for Mr. Tim Freilich of the Legal Aid Justice Center.

### **Adjournment**

There being no further business to address, the meeting adjourned at 11:11 a.m.